(4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 5062/2004 Single Bench

PETITIONER

Nanakchand Ram S Mulchandani, aged about 50 years, son of Shri Ramesh Mulchandani, Contractor, Bilaighat Nawagarh, Raipur, Resident of Nawapara, Rajim, Abhanpur, Distt. Raipur (C.G.)

P.R. No. 5050/04 Presented by Shri N. Jendam Gupta, dated 24/12/04

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through The Secretary, Department of Local Self Government, Dau Kalyan Singh Bhawan, RAIPUR (Chhattisgarh)

RECEIVED COPY 24-12-04 Clerk to A.G. Bilaspur

2. The Chief Executive Officer, Magarload Janpad Panchayat, Dhamtari (Chhattisgarh)

3. Janpad Panchayat Magarload, Tah. Kurud, District – Dhamtari, Chhattisgarh.

4. The Collector, District Dhamtari Chhattisgarh.

24/12/04

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA,

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 5062/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7-3-2005

Shri G.S. Agrawal, Sr. Advocate with Shri Sanjay Agrawal, Advocate for the petitioner.

Shri Parag Kotecha, Panel Lawyer for the respondents No. 1 and 4.

Shri Alok Baxi, Advocate for respondents No. 2 and 3.

2 Heard.

3. The petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India being aggrieved by the order dated 15-12-2004 (Annexure P-1) passed in appeal No. 05A/1989 by the Additional Collector, Dhamtari cancelling the lease for ferry as well as collection of tolls whereas period of lease was yet to expire. The petitioner's case is that the respondent No. 3 auctioned the ferry of river Mahanadi of Magarload called Belhari Nawagarh in the month of May 2004. The petitioner was the highest bidder, therefore, the respondent No. 3 accepted the petitioner's bid vide letter dated 29-5-2004 and the bid was for Rs. 7,62,000/-. The petitioner deposited an amount of Rs. 20,000/- as per the condition and terms of the auction. First instalment of lease i.e. Rs. 3,04,800/- was deposited with the respondent no. 3. Letter of acceptance of bid is Annexure P.5.

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मामला क्रमांक WP 5062/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thereafter the petitioner and respondent No. 3 executed an agreement of lease for the period commencing from 16th June 2004 to 15th June 2005 as per Annexure P-6. The petitioner was asked to take charge of the *Ghat* vide letter dated 7-5-2004 which is Annexure P-8. On 18-6-2004, the petitioner received a letter Annexure P-13 from the respondent no. 3 that he should stop ferry work as an accident had occurred in which some luggage in the boats have been lost. In reply to the said letter, the petitioner stated that he was given the boats in a damaged condition and since beginning of his work he was reminding the respondents that the amount for repair be given to him. The petitioner also informed the respondent no. 3 about unexpected early rains in the area resulting in floods in Mahanadi, thereby obstructing the 100's people coming for crossing one side to another and on oral instruction of the respondent no. 3, he continued to ferry. Reply of the petitioner is Annexure P-14. On 4-10-2004, the respondents no. 2 and 3 served a notice vide Annexure P- 15 calling upon the petitioner to pay second installment else the lease will be cancelled, to which the petitioner replied vide Annexure P-16 stating therein that he had already requested for extension of time and also stated therein the circumstances under which he was asked not to operate the ferries for a month

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

or more, resulting in huge loss to the petitioner and also the amount detained by the respondents No. 2 and 3 with respect to repairing of boats and constructions of roads of both sides of the river. However on 15-10-2004, the petitioner's lease was cancelled vide Annexure P-17, on account of the police repot, non-payment of installment and non-compliance of the condition of lease. The respondent no. 3 passed a resolution dated 14-10-2004 vide Annexure P-18 cancelling the lease of the petitioner and the notice of cancellation was given on 15-10-2004 which is violative of mandatory provision of Rules (7) of Chhattisgarh Janpad Panchayat (Management of Ferries) Rules, 1999 (for short hereinafter referred to as "the Rules of 1999").

4. The petitioner preferred an appeal which was dismissed by the Collector and the petitioner challenged the impugned order on the ground that cancellation of the lease was in utter violation of Rule 7 of the Rules of 1999.

5. Return has been filed on behalf of respondents in which it has been mentioned that in view of Rule 31 of the Rules of 1999, no notice was required before cancellation of the lease.

6. I have heard the learned counsel for the parties.

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मामला क्रमांक ..... WP 5062/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. Learned Sr. Counsel Shri G.S. Agrawal argued that in this case before cancellation of the lease of the petitioner, no notice was given as per Rule 7 of the Rules of 1999 whereas the respondents before cancellation of the lease of the petitioner were required to give one month notice in order to explain the conduct of the petitioner, therefore, on this ground only, the order impugned is liable to be set aside.

8. On the other hand, Shri Kotecha, Panel Lawyer appearing for the respondents No. 1 and 4 and Shri Bakshi, counsel appearing for respondents No. 2 and 3 argued that since there was breach and non-payment of lease money, as such, in view of Rule 31 of the Rules of 1999, no notice was necessary. They further argued that it is specifically envisaged in the Annexure P-6 that the first installment of 40% of the lease money was to be deposited within 3 days from the sanction of the *Ghat* and second installment of 20% amount was to be deposited by 15th September 2004, and vide Annexure P-15 dated 4-10-2004, the petitioner was reminded that the amount of Rs. 1,52,400/- was to be deposited by 15-9-2004 and the same has not been deposited and the said amount be deposited positively by 11-10-2004, otherwise action will be taken as per the written

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

agreement. It was also mentioned in that letter that two months' time has been sought by you which has been considered by the General Administration Committee and the same has been rejected and it has been decided to issue notice to the petitioner for payment as per the agreement.

9. Having heard the learned counsel for the parties, I have perused the relevant documents and Rule 7 and Rule 31 of the Rules of 1999. Rule 7 envisages as under:-

> "***7. Power to cancel lease.***- *The authority empowered to grant a lease of tolls of any Janpad Panchayat ferry may cancel it on the expiration of one months notice in writing to the lessee of its intention to cancel such lease. When any lease is cancelled under this rule, the Janpad Panchayat in which such ferry is situated shall pay to the lessee such compensation as may be determined, with the previous permission of the Collector.*

Rule 31 of the Rules of 1999 envisages as under:-

> ***"31. Cancellation of lease on default or breach of rules.***- *When any lessee of the tolls of ferry makes default in the payment of rent payable in respect of such*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

tolls, or has been punished of an offence under rule 28, 29, 30 of having been punished of an offence under Rule 28, 29, 30 is again punished of an offence under either of those rules, the Janpad Panchayat may cancel the lease of the tolls of such ferry, and make other arrangements for its operation during the whole or any part of the term for which the tolls were let."

10. A bare reading of these two rules would show that Rule 7 of the Rules of 1999 envisages about general power to cancel lease whereas Rule 31 of the Rules of 1999 deals with cancellation of lease on default or breach of rules and this rule can be invoked where there is a non-payment of the rent payable in respect of toll or the lessee has been punished for offence under rule 28, 29 and 30. In the present case, it is admitted position that the petitioner had failed to deposit the second installment of lease money as agreed to by him in the agreement Annexure P-6 by 15th September 2004 and for which vide Annexure P-15 dated 4-10-2004, the petitioner was informed that he was required to deposit the second installment of lease money by 15th September 2004, whereas he has failed to deposit the said amount and sought extension of two months time and that has been

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

considered by the General Administration Committee and it has been decided to reject the same. The petitioner was further informed that by 11-10-2004, he must deposit the second installment; failing which the lease will be cancelled and for which he himself will be responsible. Therefore, in the circumstances, in my considered opinion, the provision of Rule 31 of the Rules of 1999 was attracted as the petitioner failed to deposit the lease amount as per the agreement Annexure P-6 and accordingly the Janpad Panchayat was within its right to invoke the provisions and cancel the lease in view of the Rule 31 of the Rules of 1999 regarding non-payment of the lease money. The Rule 7 of the Rules of 1999 was not attracted in the case.

11. In view of the above, I am of the opinion that this writ petition has no merit, the same is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Pathak